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# The Drafting of Statute Titles

Carl H. Manson

*Southwestern University Law School*

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## THE DRAFTING OF STATUTE TITLES

By CARL H. MANSON\*

The problems of title-drafting necessitate, by way of introduction, a short historical sketch and a brief consideration of the judicial interpretation of constitutional provisions concerning the requirement of titles for statutes.

Various methods of title-drafting have been practiced. At first, neither bills nor statutes were titled. When titles were first introduced, they were merely an expression by a clerk of the Legislature, or other scrivener, of his

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\* A. B. (University of Michigan), LL. B. (ibid), S. J. D. (ibid). Graduate student at Harvard Law School. Professor of Law at Southwestern University, Long Beach, California.

understanding of the contents or purport of the act; usually added after enactment. When the Legislature undertook to supply titles, the determination of the language of the title came after the passage of the act, and without great concern or attention from the members of the Legislature.

The importance of the title of a statute depends upon the legislative practice in use at the time. This practice concerns the manner in which the title is drawn, by whom it is drawn, and its connection with the bill during its passage through the legislative channel. The legislative practice under which a title is drafted is the decisive factor in determining the judicial use of the title in defining the legislative intent of the statute.

Today, the constitutions of forty-one states<sup>1</sup> contain what we shall term a title-body clause. This clause prescribes (1) A requisite of the body of each statute, (2) A requisite of the title of each statute, and (3) A relationship between the title and the body of each statute. A typical title-body clause is expressed in these words: "No law<sup>2</sup> shall embrace more than one object,<sup>3</sup> which shall be expressed in its title."<sup>4</sup>

### *Purposes of Title-Body Clause*

The primary purpose of the requirement that the body shall embrace not more than one object is to prevent "log-rolling." This is "the practice of bringing together into one bill subjects diverse in their nature, and having no necessary connection, with a view to combine in their favor the advocates of all, and thus secure the passage of several measures, no one of which could succeed upon its own merits."<sup>5</sup> This practice is corruptive of the legislator and dangerous to the state. This "log-rolling" argument operates equally in the opposite direction; that is, those opposed to various, but different, parts of a bill may unite to defeat it. But there can be no disagreement with the general aim to have each object of legislation considered separately on its own merits. It is unfortunate that the title-body clause is not able to suppress the practice entirely, but "log-rolling" of a number of separate bills on different subjects is still possible, even if more difficult to execute.

The aim of the requirement that the object be expressed in the title<sup>6</sup> is to give the Legislature and the public fair notice of the scope of the legislation. Or to state the matter in another way, the requirement is intended to defeat deceitful, mysterious and misleading titles which foster the practices of entrapping the Legislature into the passage of provisions in the bill unrelated to and not intimated by the title of the bill, and also of misleading the people as to the contents of proposed statutes. These unrelated matters are often termed "little jokers," though they do not always prove to be little.

These needs, which title-body clause provisions are designed to serve, have ever been present, but they are more imperative in periods of pronounced legislative lawmaking such as the present.<sup>7</sup> Few constitutional provisions are called to the attention of the state supreme courts as frequently as the title-body clause.

<sup>1</sup> Except: Connecticut, Maine, Massachusetts, New Hampshire, North Carolina, Rhode Island, and Vermont. The Organic Acts of Alaska, Hawaii, the Philippine Islands, and Porto Rico and also the Civil Government Act of the Philippine Islands, each contain a title-body clause provision. Note the differences in the phraseology used by Congress.

<sup>2</sup> The words "bill," "law," and "act" are used almost equally, but whichever word is used, it includes both "bill" and "act" or "law."

<sup>3</sup> The constitutions of Louisiana, Michigan, New Jersey, Virginia, and West Virginia use the word "object"; thirty-four use "subject"; and those of Georgia and Mississippi use a combination of "subject-matter" and "subject." In the beginning, "subject" and "object" were of about equal choice in usage. In 1845 the Constitution of Texas contained an "object" clause (Article VII, Sec. 24), which was changed to the "subject"

The first task presented by a title-body clause is the identification of the object or objects of the statute. The judicial problem of applying the title-body clause to actual legislation demands a proper balancing against the policies which led to the adoption of the clause, of the policy of allowing the

clause as it now stands. The Supreme Court of Texas has held that the change of words did not change the essential meaning of the provision—*Adams v. San Angelo Water Works Co.*, 25 S. W. 605. The first Constitution of California (1849) contained an "object" clause; the title-body clause as introduced into the 1878 Constitutional Convention contained "subject"; the Committee on the Legislative Department and the Convention in its debates were not aware of any change and referred to the clause as being precisely the same as the wording of their 1849 Constitution, so the substitution was inadvertent—*Debates and Proceedings of the Constitutional Convention of California of 1879*.

It is sometimes attempted to distinguish between "object" title-body clause provisions and "subject" title-body clause provisions on this basis: that the "object" of an act is its aim or purpose, while the "subject" of an act is the matter to which it relates or with which it deals—*Louisiana v. Ferguson*, 28 So. 917; see: *State v. Steinwedel*, 180 N. E. (Ind.) 865. This attempted classification is misleading. All efforts to differentiate between "object" and "subject" in connection with title-body clause provisions are confusing and useless—See: *Bowman v. Virginia State Entomologist*, 105 S. E. (Va.) 141, and *Fahey v. State*, 21 Texas App. 146; *Spencer v. Hunt*, 147 So. (Fla.) 282, and *Pinder v. Bd. of Supr's.*, 146 So. (La.) 715.

Rather, judicial interpretation has rendered "object," "subject," "general object," "general subject," and "general purpose" equivalents. These terms are used interchangeably and without distinction by the courts. The decisions of other jurisdictions are quoted and relied upon without distinction because of the wording of the title-body clause involved. "Object" and "subject" are so interwoven that courts often misquote the particular wording of the title-body clause of their own jurisdiction—*State v. County Judge*, 2 Iowa 280; *Board of Education v. Straub*, 148 N. W. (Mich.) 716. In *Cote v. Village of Highland Park*, 139 N. W. (Mich.) 69, the court says that "provisions requiring the object of an act to be expressed in its title and limiting the act to one subject are embodied in the constitutions of many of our States." There has never been such a title-body clause provision. The conclusion is that it is immaterial whether the title-body clause contains "object," "subject," or "subject-matter." All such provisions receive like treatment. They were all adopted to accomplish the same results; and this difference in wording was not meant to indicate different means for accomplishing these results.

<sup>4</sup> Seven constitutions annex to "one subject" the phrase "and matters properly connected therewith." Where this addition is present, "subject" is held to mean the thing about which the legislation is had and "matters" is said to refer to the incidental or secondary things—*Board of Commissioners v. Scanlan*, 98 N. E. (Ind.) 801. Where this additional phrase is not present, "subject" includes the primary thing and also matters germane. The result is the same, then, with or without this additional phrase.

The presence of this phrase "and matters properly connected therewith" in the title-body clause lead to the contention that the title must express, not only the "subject," but also that the "matters properly connected therewith," in order to sustain the statute. But such a contention is never sustained by the court. *Baldwin v. State*, 141 N. E. (Ind.) 343; *Oliver v. State*, 144 N. E. (Ind.) 612; *Cyrus v. State*, 145 N. E. (Ind.) 497; *Wayne Tp. v. Brown*, 186 N. E. (Ind.) 841.

Eleven states (Alabama, Colorado, Delaware, Missouri, Montana, New Mexico, Oklahoma, Pennsylvania, Texas, Utah, and Wyoming) prescribe what they term exceptions to the operation of the title-body clause: general appropriation bills, and bills for the codification and general revision of the law. Where the exceptions are stated in general terms the result is the same as in those states where no exceptions are made. Where the contents of the excepted bills are prescribed in the constitution, the scope of such bills is thereby limited. These exception provisions are of special interest to aid in grasping some idea of the concept of the constitutional framers relative to "one subject" and "one object." See *infra* footnotes 8 and 12.

In fifteen constitutions the following addition to the title-body clause, with some differences in phraseology, is made: "But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title." The prevailing opinion as to this addition is well expressed by a delegate of the Constitutional Convention of Illinois of 1870, when he quoted Cooley's *Constitutional Limitations* to the effect that this "statement in state constitutions is not necessary" and does not amount to anything, because the courts construe subjects not expressed as invalid and sustain the one expressed, thus

Legislature a free hand to perform its functions. The title-body clause must not become a straight-jacket for the Legislature. In the main, the disposition of courts is to construe this constitutional provision liberally in favor of the Legislature,<sup>8</sup> since the title-body clause was not designed "to embarrass

obtaining the same result whether this addition is present or not. But this delegate felt that the title-body clause should indicate the penalty governing multifarious acts for the information of the legislature and the people. Besides its value as an informant, it is here submitted that the addition is important in two other respects:

First, it renders the courts more likely to conclude that the title-body clause is mandatory upon the legislature. There was a time when the issue as to whether or not the title-body clause was mandatory upon the legislature, was important in every state. Today, it is almost universally held that such provisions are mandatory. Interesting, in the development of this problem, are the decisions of Ohio and Mississippi.

Second, if an act contains two subjects in the body, only one of which is expressed in the title, the court will not sustain the one which is expressed unless it is convinced that the legislature would have enacted this part alone. This addition stands as a rebuttable presumption of the legislative intent. See *infra*, subtitle Effect of Failure to Satisfy Requirements of Title-Body Clause.

<sup>5</sup> *People v. Mahaney*, 13 Mich. 481. See *Smith v. Chase*, 109 So. (Fla.) 94; *Ex parte Maginnis*, 121 Pac. (Cal.) 200; *Heron v. Riley*, 289 Pac. (Cal.) 160; *Crabbs v. State*, 139 N. E. (Ind.) 180.

<sup>6</sup> This problem was nicely presented from three different viewpoints at the Constitutional Convention of New York of 1846.

Speaking as one of the public, a delegate cited the instance of a bill to compel the Utica & Schenectady Railroad to carry freight. Friends of the railroad company lobbied all winter complaining how very hard it would be on the company and yet at the same time urging it through the legislature because of the people's good. At the end of the session, it and many other bills, were sought to be smuggled through the legislature by being appended to another bill, the title of which gave no indication of their incorporation except that it was amended by adding the mischievous phrase "and for other purposes."

Another delegate spoke as a legislator and recalled an 1841 bill purporting to be for Legal Reform, but actually increasing the fees of lawyers twenty-five per cent. Because of the popular sentiment aroused by the title, it took a great deal of courage on the part of legislators to vote against it.

The third speaker was an attorney. He recalled that the husband could not gain a divorce in New York on the ground of cruel treatment by his wife. Representing the wife, he was disagreeably and unexpectedly floored by "An Act for changing the time of holding General Sessions, and for other purposes," carrying a rider granting this ground of divorce to husbands. He appreciated that titles should inform lawyers of the contents of the acts. Debates and Proceedings of the Constitutional Convention of New York of 1846, page 176.

<sup>7</sup> Some examples of other constitutional provisions which also seek to solve these problems: (1) That each bill be read by sections on three different days; (2) That each bill be voted on separately and each vote be recorded; (3) That no bill be altered on its passage through either House so as to change its original purpose; (4) That each bill be printed and in the possession of each House at least five days before passage; (5) That no law shall be revised, adopted, altered or amended by reference to its title only, but the act shall recite the several provisions in full.

<sup>8</sup> *In re Miller*, 244 Pac. (Ariz.) 376; *Hecke v. Riley*, 290 Pac. (Cal.) 451; *Freeman v. Halliday*, 164 S. E. (S. C.) 20; *State v. Steinwedel*, 180 N. E. (Ind.) 865.

*Lapse of Time.* The courts are reluctant to disturb a statute of long-standing because of individual and social interests and because it has become interwoven with other legislative enactments. Should a definite period of time from the passage of the act be established, after which, issues under the title-body clause could not be raised? Lapse of time is frequently considered by the court and sometimes made the sole basis of the decision in defeating the issues raised under this constitutional provision. The periods of influence are usually twenty or twenty-five years, but periods as short as two years have determined the decision of the court. It is here that objections under the title-body clause are termed "nice" and "technical," and are answered by the court holding that the people acquiesce in statutes of long-standing as being lawfully enacted—*People v. Howard*, 40 N. W. (Mich.) 789; *Continental Improvement Co. v. Phelps*, 11 N. W. (Mich.) 167. The argument that the title-body clause disturbs vested interests was answered by the Chairman of the Legislative Committee of the Constitutional Convention of Illinois of 1870 as follows, "No rights can accrue under a law passed in contravention of the Constitution"—Debates and Proceedings of the Constitutional Con-

legislation by making laws unnecessarily restrictive in their scope and operation and thus multiply their numbers." To "require that every end and means necessary to the accomplishment of the general object expressed in the title should be provided for by a separate act relating to that alone, would not only be senseless, but would actually render legislation impossible." Such fragmentary splitting of legislation "would often fail of the intended effect," because of the "inherent difficulty of expressing the legislative will when restricted to such narrow bounds." To "hold that no act can have any operation farther than the title actually expresses, would outrun the Constitution, unsettle much of the legislation, and throw an obstacle in the path of future legislation which no human wisdom could overcome."<sup>9</sup>

This identification of the object of the statute is the most difficult problem raised by the title-body clause. It is the crux of every decision. It is here that the title-body clause falters, and the door is opened to personal prejudices and political and subjective considerations by the court, making it impossible to harmonize the results.<sup>10</sup> It is here that the title-body clause is charged with placing legislation entirely at the mercy of the court.

vention of Illinois of 1870. Vol. I, Pg. 536. This is no more satisfying to practical needs than the argument of acquiescence by the courts and advocates of such a period; it is purely artificial to answer acquiescence to a party who has had no reason to object to the act until his case arose, but probably more practical when the title-body clause is involved. The title-body clause is such a constitutional requirement that it will permit the establishment of such a specific period and still accomplish the purposes for which it was designed. Undesirable doubt and litigation should not undo its value.

After a statute has been incorporated in the general code of the state by legislative enactment, it is too late to raise issues of constitutionality under the title-body clause. *Anderson v. Great Northern Ry.*, 138 Pac. (Idaho) 127; *Green v. State*, 243 Pac. (Okla.) 533.

<sup>9</sup> See the important case of *People v. Mahaney*, 13 Mich. 481 and *Cooley's Constitutional Limitations*, 8 ed. Vol. I, pg. 291. -

While it is not the usual view, judges have sometimes shown a readiness to regard a provision in a statute, which exceeds the scope of the object as expressed in the title, as ground for invalidating the entire statute, without any consideration of the legislative intent and the ability of the remainder to stand alone. For example see the dissent in *People v. Stimer*, 226 N. W. (Mich.) 899. The case involved "An act to promote the agricultural interests of the State of Michigan; to create a State department of agriculture; to define the powers and duties thereof; to provide for the transfer to and vesting in said department of powers and duties now vested by law in certain other State boards, commissions and officers, and to abolish certain boards, commissions and officers the powers and duties of which are hereby transferred." The act in its body provided also for the creation of a board of managers of State fairs. The dissent would have held this important statute void in its entirety because the title did not indicate the creation of such a board.

Also in the convention of 1870 in Illinois the following addition to the title-body clause was proposed but fortunately not adopted: "... if a subject shall be embraced in an act which is not expressed in the title thereof, such act shall be entirely void." *Debates and Proceedings of the Constitutional Convention of Illinois of 1870*. Vol. I, pg. 537; etc.

<sup>10</sup> One example of the problem of the Determination of the Object under title-body clause provisions: In *People v. Collins*, 3 Mich. 343, Judge Pratt felt that "An act prohibiting the manufacture of intoxicating beverages and the traffic therein" embraced two distinct objects; the manufacture of an article being one and the traffic (or trading) therein being another; and that it was "preposterous in the extreme, to say that selling is necessarily an incident of manufacturing; for if it is, then manufacturing and selling can only constitute one offense and two distinct penalties could not be legally or justly imposed. But it is sufficient to say that the legislature has embraced manufacturing and selling in the same act as two separate and distinct objects, as they are in fact." (Comment: Manufacturing and selling may be embraced in one act as elements of an object to which they are common. They are the expression of the means selected by the legislature to accomplish the object of this act; this object is expressed in spirit rather than letter. The fact that separate penalties are provided for their violation does not make them separate objects: nor is it illegal or unjust to provide separate penalties for the violation of various provisions of an act and the various degrees of violation. Several

There are objects upon objects. The nature of the title-body clause makes these difficulties inevitable. They are inherent. There always will be differences of opinion as to what is the object of a statute. Construe liberally—is the only general guiding principle that can be stated. The determination of the object cannot be made a mechanical process. Subject to this general caution about any fixed method, we shall probably avoid confusion and simplify the problem of determining the object if we follow a standard methods of analysis. To this end the following is offered as a rough and ready course of thought:

*First*, The *title alone* should be considered and a determination made of the object or objects it expresses. If that portion of the title-body clause, which requires a title that expresses the object of the act, is to be of any value. any practice of considering *the body of the act* to ascertain the object or objects expressed in the title is improper and often misleading. If we consider the body first or with the title, the interpretation of the title is colored by such reference to the body and consequently the requirement of notice by the title becomes of less value. The title-body clause requires that the title give notice that the body only contains provisions germane to the object in the title.

*Second*, The body should be construed to determine its object or objects. In this process, which necessarily involves serving the legislative intent, we may seek aid from the title. The body also determines the scope of the operation of the act, but it is limited by the maximum scope as expressed in the title and by a minimum scope that does not make the title deceptive.

*Third*, If problems of scope, surplusage, duality, or plurality are found to be present, an application of the rules hereafter set forth will permit one to determine the effect of the constitutional title-body clause upon the validity of the statute.

The following propositions all call for the identification of the object or objects of the act.

#### *Standard.*

An act satisfies the title-body clause if it centers about one general object which the title fairly expresses or suggests, and if the provisions in the body of the act "germane in the second degree" are specially indicated by the title.

Though this is the standard of the title-body clause, it does not follow that the entire act is invalid because in its entirety it does not conform to this standard. We shall presently review the judicial means of sustaining what remains after those parts, which do not conform to this standard, have been rejected.

The "object" or "general object" includes all provisions germane thereto. Only material which has a natural or legitimate connection with the object of the particular act is germane. There are two degrees of germane material: (1) that material which is so closely akin to the object that it does not require special indication in the title and (2) that material which, though germane, requires special indication in the title in order to be sustained.

"Germane" includes "essential," "necessary," "appropriate and convenient."

Germane material of the first degree implies elements of the "usual and ordinary," and of the "auxiliary and incidental." It is material germane in the first degree to which the court refers as "detail" or provisions "reasonably

offenses may center about one object. The violation as to manufacturing is one offense; as to selling, is another; as to manufacturing and selling, still another; and the penalties likewise vary.)

connected," "reasonably collateral," "naturally calculated," or "indirectly" related to the object in the title, and which it has in mind when holding that the title need not set forth "every end and means necessary or convenient for the accomplishment of the general object."

Germane material of the second degree is material which is germane to the object of the act, but which can be characterized as "unusual," "irregular," or "extraordinary" in its relation to and use with this object.

A matter may be ordinary in relation to some subject-matters and extraordinary in relation to others. This distinction between ordinary and extraordinary depends upon custom and usage, especially influenced by legislative and legal practices. A provision which changes a long-established governmental practice or imposes unusual civil liability or criminal punishment, or grants extraordinary rights or powers, may be a proper means of accomplishing the object of an act, but must be indicated in the title in order to be sustained. "An act to prohibit the sale of drugs" is a sufficient title to sustain a provision imposing a fine of ten dollars for each violation. But a provision imposing life imprisonment for violation of the statute would be extraordinary, and therefore germane only in the second degree and invalid unless indication of its presence were added to the above title.

### Scope.

The choice of the form<sup>11</sup> and the language<sup>12</sup> of the title of a statute belongs to the Legislature, which determines for itself the desired scope of the statute, and defines the object and the scope of the statute in the title of the act with such particularity of definition as it deems best. The Legislature may make the title restrictive and thus exclude many matters from the act which might with entire propriety have been embraced in it, but which must now be excluded because the title is made restrictive.

In other words, the title not only states the *object* of the act, but also the *maximum scope of the act*. There is a relationship between these two, but they must not be confused. The possible scope of the body is limited to the scope as expressed in the title. The actual scope of the operation of the act is determined from the body, but it must not exceed the scope indicated in the title. The title may so restrict the scope of the act that provisions in the body, though germane, are invalidated because they exceed the scope indicated by the title.<sup>13</sup> On the other hand, the title may be more general in scope than the body. It is often said that the title-body clause was to prevent surprise at finding more in the body than the title gives notice of, and "not to avoid disappointment at not finding in the act all that the title gives notice of."<sup>14</sup> But the generality of the title may prove fatal to an act: (1) the title

<sup>11</sup> The title may be in general terms, or summarize or embrace a table of contents or an index, or abstract the contents of the act. *Glasscock v. State*, 48 So. (Ala.) 700.

<sup>12</sup> The legislature is bound by the natural meaning of the terms it uses in the title and it cannot change that meaning by definitions in the body of the act, unless an indication is made in the title that the legislature is giving new meanings to the language used. This is especially important concerning terms which have acquired a legal definition and also concerning penal statutes.

<sup>13</sup> For example: "An act to regulate the sale of intoxicating liquor by prohibiting its sale to minors." The scope of this act is limited to provisions governing minors. Provisions concerning the sale of intoxicating liquor to habitual drunkards and drunken persons are germane, but would not be sustained under this restrictive title. See *Johnson v. Fautphaus*, 60 Pac. (Cal.) 172; *Paiva v. California Dorr Co.*, 242 Pac. (Cal.) 887; *Hobbs v. Gibson School Tp. of Washington County*, 144 N. E. (Ind.) 526.

<sup>14</sup> When considering the generality of titles, the following extract from Cooley's *Constitutional Limitations* (8th ed. Vol. I, p. 297) is a common quotation of the courts: "the generality of a title is no objection to it, so long as it is not a cover to legislation



may be so general as to fail to express any object<sup>15</sup> or (2) it may be so general as to render the title deceptive because of the lack of sufficient provisions in the body of the act to accord with the general title.<sup>16</sup>

### *Surplusage, Duality, and Plurality.*

Besides the problem of scope, presented above, a statute may fail to comply with the constitutional provisions by reason of surplusage of title,<sup>17</sup> surplusage of body, duality, or plurality.

Surplusage of title exists in a title containing material which is not germane to any of the body material and which does not modify the expression of the object of the act in the title. Surplusage of body is present in a body containing material which is not expressed in the title and which is not germane to the other body material, which is expressed in the title.<sup>18</sup>

Surplusage of title is the weakest of all attacks upon the statute. If the title contains two objects and body contains only one of them, the other is eliminated as surplusage, and the common object is upheld.

Surplusage of body is more difficult of solution. If the body contains two objects and the title contains only one of them, without question the one not expressed in the title is invalid. The remaining object may be sustained, but the court must be convinced that the Legislature would have enacted this residue alone.<sup>19</sup>

The presence of surplusage of title and surplusage of body in the same act involves a more serious difficulty of construction. The usual procedure is to shear the title first.

Duality occurs in a statute the title and body of which *each* contain the *same* two objects. General rule: the presence of duality renders the entire act invalid. This rule is the result of the impossibility of the court to choose between the two objects in the act. Within a very strictly construed excep-

incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection." It is here submitted that the emphasis of this proposition should not be upon the generality of titles, but upon incongruous matter. Because such matter, not having a necessary or proper connection with the object in the act, could not be sustained though it were *specifically* stated in the title, since the title-body clause requires "one object" in each statute.

<sup>15</sup> For example: "An act for the general welfare of the people of the State of C."

<sup>16</sup> For example: "An act to promote public health." The provisions of the body merely regulating the production and marketing of pepper.

<sup>17</sup> There is a difference between "surplusage" in a title and "unnecessary material" of a title. "Surplusage" is wholly improper because not germane. "Unnecessary material" is germane to the object as expressed in the title, but should be omitted because it adds nothing; it subtracts nothing. For example one might well dispense with the parts underlined in the following titles: "An act to amend the charter of the city of Chicago, to repeal certain sections thereof, and to add certain sections thereto." "An act to . . . and to promote the welfare of the people of this State." "An act to . . . and to repeal all acts and parts of acts inconsistent herewith."

<sup>18</sup> There is a difference between surplusage of title and simple insufficiency of Title. A total absence of body material germane to the object as expressed in the title renders the act one of simple insufficiency of title; and the entire act is void.

<sup>19</sup> The title-body clause of several states includes the following provision: "But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only to so much thereof as shall not be expressed in the title." This addition merely furnishes a rebuttable presumption of the legislative intent that the remainder be sustained.

Though it is almost universally held that the title-body clause is mandatory upon the legislature in that each statute must contain only one object and that each statute must have a title indicative of that object, it is submitted that the above addition does not make it mandatory upon the courts to hold valid that part of the act expressed in the title. The court will seek the legislative intent. Should it find the legislature intended the entire act to be void if any part should be declared invalid, the presumption of the addition is rebutted and the entire act is void.

tion to this general rule, courts have sometimes been able, because of very convincing facts, to select the primary object of the act, though duality was present. Then, the primary subject is sustained, while the "rider," though indicated in the title, is declared void.<sup>20</sup>

Plurality is simply a multiple form of duality and is subject to the same penalty.

### SUMMARY.

Having given: a statute.

1. If it contains one or more objects in the body, none of which is expressed in its title, the entire statute is invalid because of Insufficiency of Title.

2. If it contains Duality or Plurality, the entire statute is invalid, subject to above exception.<sup>21</sup>

3. If it contains Surplusage of Title, this surplusage is erased and the entire statute is valid.

4. If it contains Surplusage of Body, the object not expressed in the title is void and may cause the entire act to be declared invalid.

5. If there is an absence of two or more objects (or their presence having been solved by the rules presented above, so that only one object now remains), then there is only one object in the body and the same object in the title. This means that all parts of the act are germane to each other. So, the problem becomes one of Scope:

(a) If the title is restrictive, those provisions outside the scope of the title are invalid; and may cause the entire act to be declared invalid.

(b) If the title is general, a lack of provisions in the body may render the title deceptive and the entire act void.

(c) If the body contains provisions "germane in the second degree" and those provisions have not received special indication in the title, they are invalid; and may cause the entire act to be declared invalid.

### Drafting.

In stating the object of the bill or statute, the title should clearly indicate the desired scope of the object. It should be rid of surplusage and unnecessary expressions.<sup>22</sup> Its language should be free from ambiguity or deception and should be closely united to form one unit.<sup>23</sup> Otherwise, it is impossible to predict the decision of the court.

<sup>20</sup> *State v. Caldwell*, 22 N. W. (Neb.) 228; *Reilly v. Knapp*, 185 Pac. (Kan.) 47. It has also been held that this general rule does not apply where the act is otherwise unconstitutional as to one of the objects and the court is convinced that the legislative intent indicates that the remaining object should be sustained alone. Also see *Gantenbein v. West*, 144 Pac. (Ore.) 1171. This conclusion gives no effect to the title-body clause as a means of defeating "log-rolling."

<sup>21</sup> See *supra* footnote number 20. *Jackson v. State*, 142 N. E. (Ind.) 423.

<sup>22</sup> See *supra* footnote number 17.

<sup>23</sup> Lengthy titles are not to be encouraged. They make it difficult to determine whether the court will hold such a title indicative of a general treatment of the subject-matter in the body or that such a title limits the scope of the body to the specific enumerations in the title. Example:

"An act to amend sections one and two of chapter three; and section one of chapter twenty-three, and to add to said chapter twenty-three twenty-five sections to be known as sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, and twenty-six of act number four hundred and thirty of local acts of eighteen hundred ninety-nine, entitled 'an act to amend and repeal the charter of Battle Creek,' approved June one, eighteen hundred ninety-nine as amended by act number four hundred fifty-two, of the local acts of nineteen hundred one,

*Choice of Words.* The words chosen are held to speak their ordinary meaning. If the Legislature desires to use them with some other meaning in the act, the title must indicate this new usage. Several words and phrases have developed a legal meaning.<sup>24</sup> They are held to speak this legal meaning and a deviation therefrom necessitates title indication. Of course, the Legislature may define the title words in the body of the act. But its definitions must conform to the ordinary and legal meanings unless the title indicates that an unusual meaning will be found in the body. It is usually necessary to include definitions of the title terms in the body. An act regarding "beneficiary societies" or "adulterated sausage" must define what shall constitute such societies or such sausage. The problem is whether or not the definition can be said to be a natural one. The words "to define" in the title add nothing; the definition must still be a natural one, unless the title indicates otherwise. The office of a definition is to make the act more specific; it cannot enlarge the scope of the act beyond that indicated by the title. The courts are less liberal in their construction and scrutinize the title more severely when penal provisions are involved. The Legislature may create and define the elements which constitute new crimes, and name them as it sees fit, but the elements and the name must harmonize. If the Legislature changes the meaning or the content of a well-defined crime, the title must indicate such change in clear terms.

The words "other purposes" in a title have no force whatever under the title-body clause provision. They are placed out of consideration as worthless. Nothing which the act could not embrace without them can be brought in by their aid. The basis of this all inclusive interdict is historical. It was under "and other purposes" of the title that "little jokers" were prone to ride. The famous Yazoo Act of Georgia was thus inflicted.<sup>25</sup> "Other purposes" considered as "other like purposes" might properly aid to indicate the *scope* of a title, and at times prove to be very convenient, if not essential, to avoid complete enumerations in the title, which enumerations may be necessary to gain the object of the act, yet not completely within the grasp of the draftsman.<sup>26</sup> "And so forth" and "etc." receive the same treatment as "and other purposes." "And so forth" or "etc." recommend themselves for more liberal treatment because they more closely indicate "and other *like* purposes." But the best practice is to avoid the use of these terms.

approved May twenty-eight, nineteen hundred one, as amended by act four hundred seventy-eight of local acts of nineteen hundred three, approved May twenty, nineteen hundred three, and to establish and provide a municipal court in said city in the place and stead of justice courts, to provide a judge and associate judge of said court and to define the duties and fix the compensation of said judge and associate judge; and to limit the number, to define the duties and fix the compensation of constables, and to repeal all acts or parts of acts inconsistent herewith."

<sup>24</sup> For example: The application of the title-body clause to titles containing "to regulate" or "to prohibit" has been a source of difficulty. It is now well established that the title "An act to regulate . . ." will sustain some total prohibitions—i. e., the title "An act to regulate," say, "the catching of fish," will sustain certain total prohibitions such as the catching of fish during certain seasons, or of certain sizes, or by certain methods. The established basic difference between "to regulate" and "to prohibit" is that "regulation" includes the recognition of a continuing reasonable exercise of the right involved. The practice of considering "regulation" and "prohibition" as distinct objects is confusing and erroneous. Both may be included in one act without duality resulting. They are terms denoting the scope of the act.

<sup>25</sup> Title of the Yazoo Act: "An act supplementary to an Act, entitled 'An act for appropriating a part of the unlocated territory of this State for the payment of the State troops, and for other purposes therein mentioned,' declaring the right of this State to the unappropriated territory thereof for the protection and support of the frontiers of this State, and for other purposes."

<sup>26</sup> For example: "An act to prohibit the playing of the games of keno, faro, three-card monte, mustang, etc.," or "and other purposes" meaning "other *like* games or practices."

*Extraordinary Provisions.* Whether or not a particular provision is extraordinary in relation to the subject-matter involved depends upon custom and usage. Any change of a long-established governmental practice or long-established legislative policy is extraordinary. Ordinary provisions, including powers, duties, penalties, and civil liability for violations need no title indication. But extraordinary or unusual provisions, no matter how appropriate for accomplishing the object of the act, must be specially indicated in the title unless the general terms of the title designate the absolute necessity of such provision.

In *Blades v. Water Com'rs. of Detroit*,<sup>27</sup> the Supreme Court of Michigan had under consideration "An act to transfer to the city of Detroit the title to all property, of every name and nature, now . . . operated and controlled by the board of water commissioners, under . . . 'An act to amend the laws relative to supplying the city of Detroit with pure and wholesome water,' . . . and to give to said city the possession, control, and operation and management of said property . . ." and held: "Does this title purport to contemplate a complete revision of the system by which the water-works had been supported for nearly half a century, and the transfer of its management under rules and regulations radically different from those which had theretofore existed? If it were an original act to authorize the city to establish a water department, and to provide for the control, operation, and management thereof, such title would undoubtedly be sufficient." Does it give notice to the Detroit taxpayer "that the system of supporting the waterworks was to be changed from that of water-rates to that of taxation? Is it notice to the manufacturers and business men that they are to pay water-rates, while the rest—a great majority—of the city were exempt and to have free water, and that they were taxed to furnish free water to their neighbors? . . . Obviously, it would not naturally be inferred that the Legislature, under such a title, intended to make the radical changes provided in the body of this act."

An act "relative to the sale of lands for the payment of debts by executors, administrators and guardians" provided for the sale of the estate lands (a) when the personal estate was insufficient to pay all the debts or (b) when it appeared to the probate court that such sale was necessary for the preservation of the estate, or to prevent a sacrifice thereof, or for the best interests of all concerned. The last provision (b) was held void because not expressed in the title, since "the entire history of this legislation showed the settled policy of this State upon the subject-matter" to be the authorization of sale only for the payment of debts and expenses of administration if the personal estate is insufficient, "and emphasizes the variance between (this provision) and the title."<sup>28</sup>

When there is doubt, as to whether or not a provision is ordinary or extraordinary, such provision should be indicated in the title. The limitation of the scope of the act should be protected by such special indication, unless it is desired so to limit the scope.

*Method of Statement.* If general terms are chosen for the title language, they must suggest a unified, congruent core of material, either natural or developed by practice. More specific language usually has the effect of limiting the scope of the act.

It is not necessary to set forth in the title, any of the ordinary means of accomplishing the object of the act. The stating of the object and the means in the title does not make duality or plurality of objects; nor does additional descriptive matter in the title which applies to only a portion of the body.

<sup>27</sup> 81 N. W. 271.

<sup>28</sup> *Bresler v. Delray Real Estate Ass'n*, 120 N. W. (Mich.) 21.

The statement of the means alone in the title may be sufficient if the object can be derived from them. When both the object and the means are stated in the title, the scope of the act should be limited to those means, unless the title clearly indicates that others are included in the body.<sup>29</sup> As a general rule, any title enumeration of powers, duties, penalties, rights, rules, etc., or descriptive clauses, etc., ordinary or extraordinary, will render the title restrictive in scope to such enumeration and clauses. If the scope of the act is desired to be greater, make such clear in the title.

After the object is stated, descriptive clauses must be excluded unless they can be added without making the scope of the act ambiguous. It is often difficult to determine whether a long title indicates the legislative intent that the scope of the act be restricted to those things named or that it indicates an intent to cover the entire field in a broad way; leads to uncertainty as to what will be the decision of the court.<sup>30</sup>

Number references to other statutes alone in the title should not be relied upon to state the object of an act. They lead to errors and give insufficient notice of the contents of the bill or statute.<sup>31</sup> Such a practice also applies to the naming of the compiler's sections and is vigorously condemned by the courts. If number references and explanatory words are used together, the words are held to state the object, limit the scope, and explain the numbers, though in fact, some of the numbers may refer to other matters, beyond the scope of the words, but germane. These other matters would be sustained if sufficiently stated in the title, but fall, though numbers indicate them, since the explanatory words in the title are taken as the object and limit of the scope. The safest method is to use sufficient words in the title without reliance upon number references. The only value of these numbers is as a ready reference to the statutes amended.

*Amendatory Acts.* The purposes of the title-body clause require amendatory acts to be considered as distinct from the acts which they amend. The repeated statement that an amendment can contain any provision, which might have been incorporated in the act amended under its title, is too general. If the title of the amendatory act is merely a repetition of the title of the original act, the amendment can contain any provision which may have been included in the original act except as qualified by intervening development and practices, which may make the provision no longer germane to the original act or a radical change which requires special title designation.

If the title of the amendatory act states, along with the title of the original act, the amendments to be made, other provisions, though they could have been included in the amendatory act under a title which solely restated the title of the original act, cannot be included in this amendment. This statement of the nature of the amendment restricts the scope of the act thereto.<sup>32</sup>

The scope of the amendatory act may be enlarged by its title so that it is greater than that of the original act, thus sustaining provisions which could

<sup>29</sup> For example: "An act to prevent deception in the manufacture and sale of imitation butter by prescribing the containers in which such imitation butter must be sold." The statement of the means to be employed to avoid deception limits the scope to such means.

<sup>30</sup> See: *supra* footnote number 23.

<sup>31</sup> Example: "An act to amend section thirteen of act number thirty-five of the public acts of Michigan for the year eighteen hundred sixty-seven, as amended by act number twelve of the public acts of Michigan for the year eighteen hundred ninety-three, and act number two hundred thirty-four of the public acts of Michigan for the year nineteen hundred one, being section six thousand four hundred forty-six of the Compiled Laws of eighteen hundred ninety-seven." 101 P. A. 1905.

<sup>32</sup> For example: "An act to amend 'An act relative to justices' courts in the city of X,' by fixing the compensation of such justices." The additional phrase limits the scope of the amendatory act to matters concerning the compensation of the justices.

not have been included under the original title; any idea to the contrary hampers legislation.

*Unit Idea.* When an act involves several political or territorial units, it is important that the title indicate the units involved so that the inhabitants of each will receive due notice. A title enumeration of part of the units will be held deceptive and inoperative as to those units not enumerated and therefore the act usually falls.<sup>33</sup>

This unit idea usually finds expression in cases transferring territory from one political unit to another;<sup>34</sup> or in cases transferring or comingling the political duties or powers of officials of different units.

These units are often spoken of as separate objects, giving the impression that they cannot be incorporated together in one act under a "one object" title-body clause. The conclusion is, rather, that they are not rigid objects, but that their comingling must receive proper indication in the title.

*Miscellaneous Provisions.* In applying the title-body clause to statutes, several miscellaneous provisions have uniformly vexed the courts.

Special care is required in the drafting of forfeiture and taxation provisions. If they are unusual or irregular in the slightest degree, the safest method is to make a title indication.

If the scope of an act dealing with corporations is desired to include foreign corporations and limited partnerships, it is a prudent precaution to make such title indication.

In acts creating commissions, boards, etc., it is often desirable to allow the individual members to exercise certain of the board powers. If this aim is sought, a title indication insures validity under the title-body clause; but without such indication, there is great doubt as to what powers vested in the individual member will be sustained.

A title reference to the emergency clause has been held to be unnecessary since the time at which an act is to go into effect is no part of the subject of the act, but such indication is valuable and several jurisdictions have not decided this issue under the title-body clause.

*Conclusion.* When a court has for consideration a problem under the title-body clause, it is impressed (1) by the practice of the Legislature of regarding or of not regarding the matter covered as a "single branch of policy"; and (2) by the classification of the act and its subject-matter by the compilers of statutes and by the makers of indices, especially those of the Journals of the House and of the Senate.

<sup>33</sup> For example: "An act to incorporate the Village of Fruitport in the county of Muskegon" provided that territory from the counties of Muskegon and Ottawa should constitute the corporate village of Fruitport. The plaintiff owned land in Ottawa county which the act proposed to incorporate into the village. The plaintiff sought to restrain the defendant village from exercising control over his land, contending that the act violated the title-body clause and was void. The court sustained the plaintiff's contention. *Hume v. Village of Fruitport*, 219 N. W. 648.

<sup>34</sup> Suggested title: "An act to detach certain territory from the township of A., in the county of X., and attach the said territory to the township of B. in said county."

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